

Decision of the Independent Judicial Officer

ERC Heineken Cup 2013-2014

Held at: Huguenot House, 35-38 St Stephen's Green, Dublin.

On: 23 January 2014.

In respect of:

Ian Evans of Ospreys ("the Player")

And

The Ordering Off of the Player in the match Leinster v Ospreys played on 17th January 2014 ("the Match") for an offence contrary to Law 10.4 (b) of the Laws of the Game.

Judicial Officer appointed to hear the case:

Jeremy Summers (England) ("the Judicial Officer")

Decision of the Judicial Officer:

- (i) As the Player had accepted that the Referee was correct to order him off, the Judicial Officer had to determine what suspension or other sanction should be imposed upon the Player, if any;
- (ii) The Judicial Officer considered that there was no reason not to impose a suspension on the Player and as such the Player was suspended from taking part in the game of rugby up to and including 20 April 2014. This represents a 12 week suspension (including 1 fallow weekend during the 2014 Six Nations Championship) commencing on 17 January 2014. The Player is accordingly suspended until midnight on Sunday 20 April 2014 and he may play again Monday 21 April 2014.
- (iii) The Judicial Officer ordered that the Player or his club pay one half of the reasonable administrative costs incurred by ERC in convening the hearings held in front of the Judicial Officer on 23 January 2014.

Introduction

1. The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the ERC's independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2013/2014.
2. The Judicial Officer was appointed to consider the Ordering Off of the Player in the Heineken Cup match played between Leinster and Ospreys on 17th January 2014 ("the Match"). Romain Poite (FFR) was appointed as the Referee to the Match and had ordered the Player off for stamping or trampling on an opponent contrary to Law 10.4 (b) of the Laws of the Game.
3. Present at the hearing in addition to the Judicial Officer were the following persons:-
 - The Player.
 - Mr Andrew Lloyd – Team Manager Ospreys.
 - Mr Max Duthie, Solicitor for the ERC Disciplinary Officer.
 - Mr Liam McTiernan, ERC Regulations Executive.

Preliminary matters & procedure

4. At the commencement of the hearing the Judicial Officer identified all parties present and confirmed that the hearing would proceed in accordance with The Disciplinary Rules ("DR") found in the Heineken Cup Participation Agreement 2013-2104.
5. The Judicial Officer considered the following evidence:
 - The Referee's Report on the Red card dated 17 January 2014.
 - The match footage.
 - E-mail reports from the Assistant Referees and the TMO.
 - A statement from Mr McCarthy.
 - A report from Dr W Arthur Tanner, Leinster Team Doctor.
 - Six photographs showing the injuries sustained by Mr McCarthy.
 - Oral evidence from the Player.
6. The Judicial Officer also noted the Player's responses to the Standing Directions found at Appendix Six DR ("the Directions") which were as follows:-

1. Player directions

(a) whether he is the Player who was shown the red card; YES

(b) whether he will argue any preliminary matters, and if so what they are (in summary); NO

c) whether he accepts that the Official Report(s) is/are (a) true and accurate account(s) of the incident that resulted in the showing of the red card and the facts surrounding the incident; YES

(d) whether he accepts that he committed an act or acts of Foul Play as set out in the Official Report(s); YES

(e) whether he accepts that that act/those acts warranted a red card; YES

(f) whether he will try to show that the referee's decision to show the Player a red card was wrong; NO

(g) if so, why he says the referee's decision was wrong (in summary), and what evidence (and/or authorities) he will rely on to support his position (any written evidence and/or authorities must be attached to the written statement when sent by the Player, and the names of any witnesses to be called must be set out in the statement); and

(h) who will be attending the hearing and in what capacity.

Ian Evans - Player

Andrew Hore - CEO

Andrew Lloyd - Team Manager

7. The Judicial Officer also noted information submitted to him by the Disciplinary Officer by e-mail dated 22 January 2014 as follows:

*Although not strictly required under Appendix 6 to the 2013/14 Heineken Cup Disciplinary Rules (**Disciplinary Rules**), please find below a directions statement from the Disciplinary Officer in respect of the red card issued to Ian Evans (**Player**):*

The Player has not yet provided a written statement and so we do not know how he will argue the case.

I attach a copy of the decision of an appeal committee in the case of Thomson, which might be of assistance to you when considering the Player's case. You will see that at paragraphs 13 and 14 it contains certain observations of a general nature as to the conduct of cases involving stamping or trampling. I also attach a copy of the IRB law ruling of 1 April 2005 on the subject of rucking.

Other than the above and that which has already been circulated I do not currently intend to refer to any further evidence or authorities but if that changes for any reason (for example, if we receive any new evidence), I will communicate that to all relevant people as soon as reasonably practicable.

Owing to other commitments, I will not be able to attend the hearing. However, I will be represented in my absence by Liam McTiernan (ERC's Regulations Executive) and Max Duthie (a solicitor, and partner of Bird & Bird LLP).

8. The Judicial Officer confirmed that neither party had any preliminary issues that they wished to raise. In advance of the hearing the Judicial Officer provided the parties with a copy of a decision taken by an RFU disciplinary panel in *Roland* (21 October 2013), which panel the Judicial Officer had chaired. The Judicial Officer noted that this was in no way binding but advised the parties he had reviewed the decision as it related to broadly similar matters. Having done so he had felt it appropriate to bring the decision to the attention of the parties and to provide them with a copy of it.
9. As required by DR 6.2.2 the Judicial Officer reviewed the Ordering Off including the Referee's reasons for the Ordering Off. In accordance with DR 6.2.8 the Judicial Officer referred to the Official Reports of the Match Officials and asked the Player whether he accepted the Official Reports as true and accurate accounts of the incident and the facts surrounding the incident

and separately whether the Player accepted that he should have been Ordered Off.

10. The Player formally accepted that he had committed an act of foul play and that he had been correctly issued with a Red Card. He further accepted the terms of the Official Reports.

Evidence supporting Ordering Off

11. Pursuant to DR 6.2.9 the Judicial Officer directed that the video footage of the incident should be shown. The parties watched the video footage with the sound off.

12. In advance of the hearing the Judicial Officer had prepared a narrative of what he considered the footage showed. This he reviewed with the parties during the hearing, who were able to comment upon it, and the narrative was therefore substantially agreed.

- The footage showed Ospreys attacking from a shortened (6 man) line-out just beyond the Leinster 10 m line. The Player is jumping at the back of a front of pod of three Ospreys forwards, and the ball is then thrown to the front jumper of that pod.
- The Player is supporting the Ospreys jumper and is positioned directly behind the jumper. By the time the jumper comes down having caught the ball, the Player has turned some 90 degrees so that his back is now facing towards the Leinster goal line.
- He is instantaneously sandwiched between Ospreys players seeking to drive the ball carrier forward and Leinster players trying to defend the maul. L5 goes to ground very shortly after the ball is caught by the jumper and is the only Leinster player on the ground.
- The ball is quickly transferred from the jumper to O7 who then retains possession of the ball throughout at the back of the maul.
- As the maul progresses a number of unidentified Ospreys feet (which are facing forward towards the Leinster goal line) are seen to make contact with L5's body. These cannot be attributed to the Player who can clearly be seen at the rear right hand side of the maul, although still bound in by other players. From within the maul L5 appears to grab at the leg of an Ospreys player.
- From a separate reverse angle a foot is then seen to raise to a height of between 6 and 12 inches from the ground and to come down either onto the side of L5's head or his shoulder on at least three and possibly four separate occasions. The contact could not be described as a glancing blow, and the foot came down with some force.
- Shortly after L5's hand can be seen attempting to grasp the lower leg of the offending foot. A further stamp on L5's head may then have occurred after that intervention.
- The heel of the offending boot can be seen from the reverse angle and only one set of heels are facing backwards towards the Leinster goal line.
- During this sequence the Player can be seen to be briefly looking down but it is not possible to determine where he is looking or where his feet are placed at that precise moment.
- The Player is also seen to rise slightly whilst in the maul. It is not clear whether this resulted from his having been driven backwards or because he had levered himself upwards from the bodies of other players. Again it was not possible to identify where the Player's feet were positioned at that precise moment.
- As the maul collapses to the right, L5 is seen on the left and seeking medical assistance.

- Before the maul collapses the ball is presented to O9 to commence the next phase of play.
 - At no point during this passage of play does the ball go to ground.
13. The incident occurred just before the 20 minute mark in the first half. The score at that time was 3-3 and both sides would have therefore been endeavouring to gain an ascendancy.
 14. The report from the Referee stated L5 "*stamped a Leinster player on the head as he was on the ground*" Although he had viewed the big screen from the pitch he had taken his own decision. A statement from the TMO concurred with the Referee's view but indicated that he had not been asked to assist in the decision taken. Neither AR had seen the incident.
 15. L5 submitted a statement. He recalled being conscious of a number of boots making contact with his body and then a number of boots making contact with his head. He did not know who had been responsible or whether more than one player was involved. There had been a lot of blood and he was told by medical staff that he needed to leave the field immediately.
 16. A medical report was submitted from Dr W Arthur Tanner the Leinster team Doctor, the material part of which read as follows:

Upon cleaning the blood and contamination from the wound it was easy to assess that there was an 11cm. curvi-linear laceration extending from his right naso-labial fold to above and slightly behind his right ear. Under local anaesthesia the wound was cleaned and debrided. It extended full thickness to the periosteum of the zygoma (skull bone). Thirty fine nylon sutures were used to approximate the skin and deep subcutaneous tissues. He was placed on prophylactic antibiotics.

He was deemed unfit due to injury to return to play.
 17. At the time of the hearing it was not known when L5 would be able to resume playing.

Mitigation

18. The Player gave evidence. He explained that as the maul formed players had been positioned under him blocking his view of what was beneath. He was accordingly unable to see what was on the ground below him. He had not acted with any intention or malice.
19. He had been trying to keep the maul up so that forward momentum could be generated through which either a penalty or a try might have been gained.
20. He felt the footage showed that L5 had put himself in a dangerous position and had then acted illegally by grabbing at his leg, the inference being that this has been in an attempt to collapse the maul.
21. He was clear that he could not see L5 below him even though he agreed that at one stage he had looked down. He had been rendered off balance by the competing forces applied to the maul by both teams and his left leg had come off the ground. He was therefore using his right leg to try and steady himself to assist in keeping the maul up and going forward.
22. In answer to cross examination from Mr Duthie he accepted that he had made contact two or three times with L5's head. He reiterated that he had not initially known that L5 was below him, but accepted that, by the time of the second contact, he had known he was making contact with another player's body.
23. He stated that he however did not know that he was making contact with a head (due to the quality of modern boots) but candidly, and rightly, accepted that there was no place in the game for a stamp to an opponent's head. Had he realised that this was what was happening

he would not have acted in the way that he had. He felt that he had simply been trying to regain his balance to assist in keeping the attack going forward.

24. He had not spoken to L5 immediately after the game due to the emotion of the moment but had phoned him on the Monday after the game (played the previous Friday). He had been mortified by the extent of L5's injury. He had apologised and this had been accepted. He was hopeful that L5 would be fit to compete in the Six Nations and that there would not be any significant facial scarring.
25. He confirmed that he had looked down but had not been able to see what was below him. He had not intended to stamp on L5 and had just been trying to get his foot down to recover his balance. He did not think there had been space for him to have put his foot down anywhere else. With reference to the later stamps he had simply been trying to get his balance and contact had just happened. He however accepted that he had known he had been making contact with a body by that time.
26. In response to questions from the Judicial Officer he stated that at the time he had not known what part of L5's body he had trodden on. He rejected the proposition that he could have moved his foot either backwards or to the side and thus have avoided L5. He was however not able to explain adequately why, if his left leg had been off the ground as he claimed, he had then raised his right leg off the ground (more than once) to get balance. He nevertheless thought that, had he not done so, he could have fallen over and risked injury to himself.
27. The Player was asked by the Judicial Officer if he was asserting that his conduct was accidental. The Player confirmed that he was not. The Judicial Officer explained the term reckless as defined for the purposes of rugby discipline and the Player asserted that he had been acting recklessly but not intentionally.
28. The Player is 29 and has been a professional player since aged 18, playing over 150 first class games in that time. He has won 32 full caps for Wales in addition to representing his country at age grade levels on numerous occasions. He was a member of the victorious British & Irish Lions tour to Australia in 2013.
29. He accepted that he had the following disciplinary record, although in the main this had occurred a number of years ago:
 - 2005: 8 week suspension for stamping.
 - 2006: 6 week suspension for a late tackle.
 - 2012: Red card following two yellows (one technical). Sending off considered sufficient sanction.
30. Mr Lloyd made short submissions on behalf of the Player. He had known him for a long period of time and considered him to be a tough player but not a dirty one. His record showed that he had improved his discipline considerably in the past 6 or 7 years. The Player had been genuinely upset by the injuries caused to L5.

Submissions on sanction

31. The Judicial Officer referred Mr Lloyd to the sanctioning exercise he was required to undertake and the need to make an assessment of the Player's conduct pursuant to DR 6.7.32. In so doing he reviewed the prescribed entry point features and his view as to the findings that would need to be made in answer to each of them. Other than to stress that the Player's conduct had been reckless rather than intentional (DR 6.7.32 (a) and (b)) Mr Lloyd made no other submissions.
32. Mr Duthie indicated that the Disciplinary Officer did not advocate any particular sanction. In addressing the factors that the Judicial Officer would need to consider he drew attention to the decision in *Thompson* (2012; on appeal from the IRB). In his view the critical factor upon

which the Judicial Officer would have to come to a finding was the issue of intentionality. He however submitted that a finding of recklessness would not of itself necessarily preclude a top end entry point. He noted that the Player's plea and remorse were both issues for which the Player deserved credit. He reminded the Judicial Officer of the provisions of DR 6.7.38 as to the maximum reduction from the entry point that could be applied to reflect such mitigating as might be found present.

33. Mr Duthie further drew attention to DR 6.7.44 reflecting the need for a meaningful period of suspension to be imposed and in this respect noted the two potentially fallow weekends in the upcoming Six Nations tournament. In response Mr Lloyd advised that Alun Wyn Jones had been released by Wales during the 2013 tournament and had played for Ospreys in one of the fallow weeks. He therefore thought it possible that the Player could be required to play in a corresponding fixture this year if available for selection.

Decision as to disposal

34. The Judicial Officer retired to deliberate in private in respect of what, if any, sanction would be appropriate in the circumstances. Given the nature of the offending and potential impact of a sanction upon the Player the Judicial Officer gave the most careful consideration to all the evidence and submissions before him, and reminded himself of the standard of proof (balance of probabilities) to be applied.
35. Having regard to the detail of the incident as set out at paragraph 12 above, the Judicial Officer made the following findings:
- i. The offending consisted of at least 3 strikes delivered by the Player's right boot to the head of L5;
 - ii. If any of the stamps (it was not possible to be wholly clear from the footage) did not make contact with L5's head, contact was nevertheless made with the shoulder;
 - iii. Having made the first contact the Player was aware that he had stamped on an opponent and yet continued to do so;
 - iv. By the time, at least, of the second stamp the Player had the opportunity to have moved in a way which would not have involved stamping or trampling on L5.
 - v. The Player's submission that he could not have placed his foot anywhere else was accordingly rejected. In this respect the Judicial Officer noted that L5 had been able to bring his arm around into a space directly behind the Player's right leg and to briefly grab the leg.
 - vi. The Player's submission that he had been trying simply to regain his balance by moving his right leg in the way that he had was similarly not accepted.
 - vii. The Judicial Officer was further unable to accept the Player's claim that he had been unaware of which part of L5's body he had been standing on.
36. In light of those findings the Judicial Officer was satisfied to the standard required that the offending involved a degree of intentionality in that by the time of the second and subsequent stamps, on the Player's own evidence, he was aware that a body was beneath him. The Player may not have intended to stamp on L5's head and, the Judicial Officer was prepared to accept that, on the balance of probabilities, he had not intended to inflict the injury caused. However, to the extent that the Player's conduct could be categorised as reckless, it was recklessness at the highest level.
37. It should also be noted that passage of play involved a maul and nothing else. The Judicial Officer found that the ball was at all times in the possession of O7 and off the ground. There was no ruck. As such the Player could not (even) have been engaged in legitimate rucking.

Further, had the ball been in the proximity of L5, which it plainly was not, the use of feet directed at a player to remove him as an obstruction is in any event illegal.¹

38. L5 fell to the ground almost immediately after the ball was caught in the line out. Ospreys' players then drove over him. As such, to the extent that he was on the wrong side of the maul, this was as much to do with the dynamics of the situation as it was with a deliberate move by L5 to slow down the Ospreys attack, if that was what he was trying to do.
39. The Judicial Officer considered whether L5 was trying to collapse the maul illegally. If he was, his action in trying to grab at an Osprey leg was brief and appeared wholly ineffectual. An equally plausible explanation for that action however was that L5 was simply trying to protect himself from the boots (not just the Player's) that were coming down upon him.
40. However, even if L5 was trying to collapse the maul, that in no way justified the action then taken by the Player. Had such conduct occurred away from a rugby pitch an altogether different form of sanction might well have been imposed.
41. In turning to the question of sanction, the Judicial Officer considered the terms of the Disciplinary Rules including DR 6.7.32 through to DR 6.7.35. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.
42. The Judicial Officer noted that the offence of stamping or trampling on an opponent in contravention of Law 10.4 (b) was listed within the IRB Recommended Sanctions for Offences Within the Playing Enclosure (found at Appendix Three DR) as follows:-
 - Lower End – 2 weeks
 - Mid Range – 5 weeks
 - Top End – 9+ weeks
 - Maximum Sanction – 52 weeks
43. To decide upon the appropriate entry point the Judicial Officer assessed the seriousness of the Player's conduct by reference criteria prescribed by DR 6.7.32 in the following way:-
 - a. There was an element of intentionality present. The Player had deliberately continued to stamp on an opponent having become aware that he was doing so.
 - b. From the point beyond the initial stamp there had at least been recklessness, at the highest level, both as to continued offending and the risk of serious injury arising.
 - c. The offending comprised of at least three stamps to the head of a prone opponent. Self evidently that is grave. The injuries sustained are testament to that fact. Fortunately no injury was sustained to the eyes, but there was plainly a real risk that significant damage to the eye could have occurred.
 - d. The offending was as described in paragraphs 12 above.
 - e. There was no provocation.
 - f. Retaliation was not in issue.
 - g. Self defence was not in issue.
 - h. L5 suffered a significant facial injury as described in paragraph 16 above.
 - i. There was no effect on the game.
 - j. L5 was prone on the ground and clearly vulnerable.
 - k. There was no premeditation.
 - l. The offending was complete.
 - m. There were no other relevant features in relation to or connected with the offending.
44. In light of these findings the Judicial Officer determined that the offending should be categorised as being at the TOP END of the scale of seriousness.
45. Having made that assessment the Judicial Officer was then required pursuant to DR 6.7.33

¹ IRB Clarification 1 2005 - 1.4.05

to arrive at entry point of between 9 and 52 weeks in line with the top end range for this offence specified by the IRB as set out in paragraph 41 above.

46. In so doing the Judicial Officer noted the intentionality and/or high degree of recklessness he had found to have been present and the nature of the injury sustained by L5 in consequence of the offending. He was also conscious of the fact that conduct of this nature adversely affects the image of the game.
47. In the view of the Judicial Officer the appropriate entry point for this offending was a suspension of 16 weeks.
48. The Judicial Officer then considered the "off-field" aggravating factors as provided for by DR 6.7.34. Whilst noting the Player's record, this in the main related to matters that had arisen over 5 years previously, and in all the circumstances the Judicial Officer determined that no increase from the entry point he had arrived at was required.
49. Noting the submissions made by Mr Duthie, the Judicial Officer considered that the following were off-field mitigating factors to take into account in determining the appropriate period of suspension:-
 - The Player's acknowledgement of guilt.
 - His conduct at the hearing.
 - His clear remorse.
50. In all the circumstances, and having regard to the manner in which mitigation should be calculated as prescribed by DR 6.7.37, the Judicial Officer determined that the Player was entitled to a 25% reduction, being 4 weeks, from the entry point by way of mitigation.
51. The Judicial Officer accordingly determined that the appropriate sanction for the Player's offending was the imposition of a period of suspension of 12 weeks.
52. The Judicial Officer then considered the Player's playing schedule in the light of the upcoming Six Nations Championship. He felt able to conclude, having regard to the submissions from Mr Lloyd, that it was possible that the Player might have been required to play for Ospreys on one, but not both, of the fallow tournament weekends.
53. Having done so the Judicial Officer ordered that the Player should be suspended from Friday 17 January 2014 (the date of his dismissal) until midnight on Sunday 20 April 2014.
54. The Player and the Disciplinary Officer were reminded that DR 7.1.1 provided for a right of appeal against this decision.
55. Following an application by Mr Duthie, the Judicial Officer ordered that the Player and/or his club should bear half of the Disciplinary Officer's reasonable administrative (not legal) costs of convening the two hearings heard by this Judicial Officer on 23 January 2014.

Jeremy Summers

**Jeremy Summers
Judicial Officer**

Date: 27 January 2014